



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

P

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,338	01/19/2001	William Richard Dyer	0914-1464	7156
6449	7590	12/21/2005	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			JARRETT, SCOTT L	
		ART UNIT		PAPER NUMBER
		3623		

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/764,338	DYER, WILLIAM RICHARD	
	Examiner	Art Unit	
	Scott L. Jarrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This non-final office action is in response to decision of the Pre-Appeal Brief Conference mailed December 9, 2005, the finality of the office action mailed May 24, 2005 is withdrawn. Applicant's amendments filed August 22, 2005 and September 29, 2005 amended claims 1-17. Currently claims 1-17 are pending.

Response to Amendment

2. Applicant's amendments filed August 22, 2005 and September 29, 2005 amended claims 1-17.

Response to Arguments

3. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

4. It is noted that the applicant did not challenge the Official Notice(s) cited in the previous office actions therefore those statements as presented are prior art. Specifically it has been established that it was old and well known in the art at the time of the invention:

- to correct skewed results (outliers) in order to ensure erroneous data does not adversely affect statistical analysis;

- to compare multiple surveys, regardless of the method for conducting those surveys provides a mechanism for determining such things as trends between various user communities;
- to use the eXtensible Markup Language (XML) to exchange a wide variety of data over a computer network;
- to use cookies to identify Internet users (an identifying code); and
- to provide exclusive products from producers to retailers/vendors.

Claim Rejections - 35 USC § 112

5. Claims 3-4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 3-4, Claims 3-4 recite the limitation "the first and second consumer products" in Claim 1. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read that the surveys and subsequent selection of the consumer products refers to surveying and selecting any one or more of the one or more consumer products for the purposes of examination.

Regarding Claim 10, Claim 10 recites the limitation "the item" in claim 7. There is insufficient antecedent basis for this limitation in the claim.

Examiner interpreted the claim to read that any item (coupon, reward, incentives, compensation, product, gift, etc.) is offered for the purposes of examination.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyer et al., U.S. Patent No. 5,090,734 in view of Burke, Raymond et al., Marketing Research in the Digital Age (1999).

Regarding Claim 1 Dyer et al. teach a method for surveying/evaluating snack food consumer products using well known home usage testing techniques/methods wherein consumers receive a plurality of consumer products and are surveyed multiple waves/cycles over a period of time wherein the method “enhances the ability to predict successful products and concept” (Abstract; Column 3, Lines 6-19 and 60-68; Column 5, Lines 55-58).

More specifically Dyer et al. teach a system and method for surveying (interviewing, questioning, polling, etc.) users/consumers comprising:

- presenting one or more consumer product to the user (Column 2, Lines 19-39); Column 3, Lines 35-37; Column 4, Lines 4-14);
- presenting a questionnaire (survey, set of questions, evaluation, test, etc.) to the user if the user selects (clicks, chooses, picks, orders, buys, etc.) at least one of the consumer products presented (Column 1, Lines 60-65; Column 2, Lines 30-34 and 50-

63; Column 3, Lines 61-68; Column 4, Lines 51-59; Column 5, Lines 64-68; Column 6, Lines 1-9);

- accepting and storing (saving, recording) the user's first response to the questionnaire (Column 2, Lines 55-68; Column 3, Lines 60-68);
- repeating (waves, cycles, etc.), at least one time, the presenting of one or more products, a questionnaire and accepting and storing (recording) the user's responses (Abstract; Column 5, Lines 10-24; Column 6, Lines 1-9); and
- performing consumer product testing (sustainability, acceptance, renew ability, profitability, sales, volumetric determination, market penetration, likeability, preference, saying power, etc.) testing (evaluation, consideration, surveying, questioning, etc.) by comparing the user's first response (base wave, baseline survey, etc.) to the user's subsequent responses (e.g. comparing responses to baseline survey, to subsequent waves/cycles, etc.; Column 2, Lines 19-27; Column 4, Lines 1-3; Column 6, Lines 1-9).

Dyer et al. does not expressly teach using computers to conduct the user surveys or conducting the surveys over a computer network as claimed.

Burke et al. teach using computers connected over a network (Internet) to conduct online user surveys (evaluations, tests) of one or more consumer products (market research, consumer product testing), in an analogous art of market research and/or consumer product testing for the purposes of using "new" technologies such as the Internet to transform (create, conduct and analyze surveys/evaluations faster,

cheaper, reduced cost, wider reach, more simply, etc.) well known and widely practiced marketing research techniques/approaches such as surveys (Paragraph 1, Page 1), consumer product evaluations (Page 5), field testing (Paragraphs 1-3, Page 6), in-home usage testing (Paragraphs 1-2, Page 23) or the like (Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-3, Page 9).

Burke et al. further teach that the Internet-based system and method for performing marketing research (surveying online users) further comprises:

- comparing online and offline consumer product tests (Bullet 2, Page 8);
- determining (testing, evaluating, etc.) the sustainability (e.g. demand) of one or more consumer products via concept testing/evaluation (Paragraphs 1-4, Page 14);
- providing for ongoing/continuous consumer product testing/evaluation (Last Paragraph, Page 21, Paragraphs 1-2, Page 22; Paragraphs 1-2, Page 23); and
- providing incentives/rewarding users for participating in the marketing research (Bullet 2, Page 8; Bullet 3, Page 11).

Burke et al., further teach the use of online consumer product testing by Quaker Oats wherein the company compared online and offline surveys/questionnaire responses/results (Bullet 2, Page 8).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al., would have benefited from surveying online users regarding one or more consumer products using computers over a network in view of the teachings of Burke et al.; the resultant system providing the

expected and well known benefits associated with automation and/or use of the Internet such as decreased costs, increased reach, increased speed or the like (Burke et al.: Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-9, Page 9).

Further it is noted that the phrase “sustainability” merely represents an intended field of use and/or non-functional descriptive material (simply a label) that is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the label applied to the user testing/surveying performed or its intended field of use. Further, the structural elements remain the same regardless of the label applied to the online user testing/surveying or its intended field of use. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 2 Dyer et al. does not expressly teach the correcting or correction of a skewed result.

Official notice is taken that correcting or the correction of skewed results (outliers) is well known in the art of statistical analysis as a means for ensuring erroneous data does not adversely affect the statistical analysis’ results.

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would utilize a plurality of well known statistical techniques during the analysis of the survey data including but not limited to the proper treatment of data errors or anomalies which inevitably arise when performing statistical sampling in view of the teachings of official notice (i.e. statistical techniques to prevent the distortion of the survey findings due to skewed data would have insured the results of the statistical analysis more accurately reflected the respondents responses).

Regarding Claim 3 Dyer et al. teach a system and method for surveying users wherein the questionnaire asks about the presented one or more consumer products (set of consumer products; Column 1, Lines 60-65; Column 3, Lines 59-68).

Regarding Claim 4 Dyer et al. teach a system and method for surveying users further comprising presenting the questionnaire to the user if the user selects (buys, orders, picks, etc.) one or more of the presented one or more consumer products (Abstract; Column 2, Lines 30-34 and 50-63; Column 4, Lines 51-59; Column 6, Lines 1-9).

It is noted that it is impossible for the user to select both the first and second products as claimed since Claims 1-3 merely recite that *one or more* products are

presented (i.e. there may only be one product to select from) further there is no antecedent basis for the first/second consumer products, as discussed above.

Regarding Claim 5 Dyer et al. does not expressly teach conducting user surveys via a computer network or subsequently that the computer network is the Internet as claimed.

Burke et al. teach surveying online users over a computer network wherein the network is the Internet, in an analogous art of marketing research and/or consumer product testing/evaluation for the purposes of conducting a plurality of primary and secondary marketing research using the Internet (Paragraphs 1-3, Page 1; Paragraph 3, Page 6; Paragraphs 1-2, Page 7; Paragraphs 1-2, Page 23).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al., would have benefited from surveying online users regarding one or more consumer products using computers over the Internet in view of the teachings of Burke et al.; the resultant system providing the expected and well known benefits associated with automation and/or use of the Internet such as decreased costs, increased reach, increased speed or the like (Burke et al.: Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-9, Page 9).

Regarding Claim 6 Dyer et al. is silent on who, what entity/entities, presents/conducts the consumer product surveys/tests.

Dyer et al. teach online surveying wherein online surveys, consumer product evaluations, marketing research and the like are conducted by a plurality of entities (businesses, firms, web sites, users, shoppers, etc.) for example Quaker Oats conducting a snack food consumer product study with M/A/R/C Online (outsourcing of marketing research), Socratic Technologies conducting telephone and web-based marketing research for a software company, a print magazine for teenagers testing of alternative cover concepts via the web or the online consumer product survey method/system provided by Bizrate.com to online businesses/merchants (e.g. Bizrate.com, the second entity, performs the marketing research/consumer product testing/surveying for online vendor, second entity; Paragraph 1, Page 5; Paragraphs 2-3, Page 9; Bullet 2, Page 11).

Dyer et al. further teach a plurality of online consumer product evaluations (e.g. survey/evaluation results) that are available and/or conducted by a plurality of entities such as e-buyers-guide.com, e-pinions.com, Amazon.com, NFO Interactive, NPD Greenfield and Cyber Dialogue (Paragraph 1, Page 5; Bullet 1, Page 10).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from the old and well known practice of outsourcing/partnering with marketing research firms

such as Bizrate.com in order to leverage those firms expertise and/or systems to survey online users and/or conduct consumer product testing (sustainability, preference, acceptance, demand, purchase intent, etc.) in view of the teachings of Burke et al.; the resultant system enabling entities to benefit from the use online methods/systems for consumer product evaluations (reduced cost, increased reach, increased flexibility, etc.); Burke et al.: Bullets 1-3, Page 8).

Further it is noted that the first and second entities merely represent non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of who, what entity, performed the surveying/testing steps. Further, the structural elements remain the same regardless of who, what entity, performed the surveying/testing steps. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 7 Dyer et al. is silent on who, what entity (firm, user, business, system, etc.), performs the consumer product surveying/testing as discussed above.

Burke et al. teach conducting online consumer product surveys (evaluations, tests, etc.) wherein a plurality of entities provide/participate in the surveying of online

users including but not limited to a first entity that is an online vendor (store, business, seller, retailer, etc.; e.g. Amazon.com) and a second entity is a producer (e.g. Quaker Oats, high-tech toy company, etc.; Bullets 1-3, Page 8) of the product.

Burke et al. teach the well-known practice outsourcing marketing research (both online and offline) for the purposes of understanding such things as the demand from “new” consumer products (M/A/R/C Online, Socratic Technologies, NFO Interactive, NPD Greenfield, etc.; Bullets 1-3, Page 8; Bullet 1, Page 10).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from enabling producers, vendors or other entities to participate in the online marketing research in view of the teachings of Burke et al.; the resultant system enabling entities to benefit from the use online methods/systems for consumer product evaluations (reduced cost, increased reach, increased flexibility, etc.; Burke et al.: Bullets 1-3, Page 8).

Further it is noted that the first (vendor) and second (producer) entities merely represent non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of who, what entity, performed the surveying steps. Further, the structural elements remain the same regardless of who, what entity, perform the method steps. Thus, this descriptive material will not distinguish the

claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 8 Dyer et al. is silent on who, what entity (user, business, system, etc.), performs the user surveying/product testing.

Burke et al. teach a plurality of entities that participate in surveying online users and/or conducting online marketing research (e.g. consumer product evaluations) including vendors, producers, third-party marketing research firms or the like, as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from the old and well known practice of outsourcing/partnering with marketing research firms in order to leverage those firms expertise and/or systems to survey online users and/or conduct consumer product testing (sustainability, preference, acceptance, demand, purchase intent, etc.) wherein those firms by their very nature share information amongst/between the plurality of participants/sponsors of the survey/test, in view of the teachings of Burke et al.; the resultant system enabling entities to benefit from the use online methods/systems for consumer product evaluations (reduced cost, increased reach, increased flexibility, etc.; Burke et al.: Bullets 1-3, Page 8).

Regarding Claim 9 Dyer et al. teach a method for surveying users wherein the producer (manufacturer, developer, etc.) provides the consumer product free of charge to the entity/entities participating in the survey (Abstract; Column 3, 10-13; Column 6, Lines 1-16).

Dyer et al. is silent on who, what gentility/entities, perform the method steps and subsequently does not expressly teach providing the consumer product free to a vendor (retailer, distributor, etc.) as claimed.

Official notice is taken that providing of sample, concept, test or prototype products by producers of the products to any of a plurality of entities including consumers (as taught by Dyer et al.), retailers, vendors, third party marketing research firms or the like free of charge thereby enabling those entities to evaluate/test the product is old and well known.

For example producers/manufacturers commonly provide marketing research firms with the consumer products (samples, prototypes, etc.) necessary to conduct their marketing research including but not limited to free samples to be provided to consumers (end testers) as part of a the product's testing/evaluation since it would be impractical and/or impossible to conduct product evaluations such as home-usage tests without samples of the product to be tested; this is especially true when such products

are not available to the general public (i.e. are new and are being market tested against existing competitors).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al., with is providing of free consumer products to the entities testing/evaluating the consumer products, would have benefited from providing vendors or other entities such as marketing research firms with samples/prototypes of the product being evaluated/tested in view of the teachings of official notice; the resultant system enabling entities external to the producer to test/evaluate the yet unavailable products.

Regarding Claim 10 Dyer et al. is silent on who, what entity/entities, perform the method steps and subsequently does not teach providing exclusive items (products, coupons, rewards, etc.) as claimed.

Burke et al. teach providing exclusive items such as reward points to entities participating in the Internet-based marketing research, in an analogous art of marketing research and/or consumer product testing/evaluation, for the purposes of rewarding/compensating the entities for their participation in the online surveying/testing (Bullet 2, Page 8; Bullet 3, Page 11).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from providing exclusive items (points, free gifts, incentives, etc.) to entities participating in the survey in view of the teachings of Burke et al.; the resultant system and method rewarding/compensating the entities for participating in the online consumer product testing/evaluation (Burke et al.: Bullet 2, Page 8; Bullet 3, Page 11).

Regarding Claim 11 Dyer et al. teach a system and method for surveying users wherein the consumer product is a snack food product (Column 2, Lines 27-28; Column 3, Line 8; Column 4, Lines 4-15).

Further it is noted that the type of consumer product surveyed represents non-functional descriptive material and is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless specific type of consumer product being surveyed. Further, the structural elements remain the same regardless of the specific type of consumer product being surveyed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 12 Dyer et al. teach a method for surveying users further comprising performing offline sustainability testing/surveying as discussed above.

Dyer et al. does not expressly teach performing user surveys/consumer product testing online (over a network) or subsequently comparing the results of online and offline surveys results as claimed.

Burke et al. teach performing online and offline consumer product testing/user surveying as well as comparing the results/responses between online and offline consumer product tests/surveys (Bullets 1-3, Page 8), in an analogous art of marketing research and/or consumer product testing/evaluation, for the purposes of understating the differences/similarities between the test results and/or respondents/users (Bullets 1-3, Page 8).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from performing online user surveys/consumer product testing as well as comparing the results/responses and/or respondents between the online and offline surveys/product evaluations in view of the teachings of Burke et al.; the resultant system enabling users/businesses to understand the differences/similarities between the test results and/or respondents/users (Burke et al.: Bullets 1-3, Page 8).

Regarding Claim 13, Dyer et al. does not teach surveying online users or subsequently that questionnaire is a CGI script, Java applet or PERL script as claimed.

Burke et al. teach surveying online users using well-known Internet technologies/approaches as discussed above.

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al., would have benefited from surveying online users regarding one or more consumer products using computers over a network in view of the teachings of Burke et al.; the resultant system providing the expected and well known benefits associated with automation and/or use of the Internet such as decreased costs, increased reach, increased speed or the like (Burke et al.: Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-9, Page 9).

Burke et al. is silent on the specific technologies, scripting languages and/or standards used to develop (code) the online surveys.

Official notice is taken that developing online surveys, questionnaires, forms or the like utilizing a CGI script, Java applet or PERL script is old and very well known.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for surveying online users as taught by the combination of Dyer et al. and Burke et al. would have utilized any of a plurality of well known scripting languages, standards and/or languages to develop/create the online surveys in view of the teachings of official notice.

Further it is noted that the programming language utilized to create/present an online questionnaire represents non-functional descriptive material and is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless specific language/standard utilized to present the survey/questionnaire. Further, the structural elements remain the same regardless of the specific language/standard utilized to present the survey/questionnaire. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 14 Dyer et al. does not expressly teach surveying users over a computer network or subsequently transmitting the user's first response to the questionnaire (form, survey, etc.) over the computer network as claimed.

Burke et al. teach transmitting the users responses (first, second, etc.) to the online survey/evaluation/test/questionnaire (form) over a computer network in an analogous art of marketing research and/or consumer product testing for the purposes of using “new” technologies such as the Internet to transform (create, conduct and analyze surveys/evaluations faster, cheaper, reduced cost, wider reach, more simply, etc.) well known and widely practiced marketing research techniques such as surveys (Paragraph 1, Page 1), consumer product evaluations (Page 5), field testing (Paragraphs 1-3, Page 6), in-home usage testing (Paragraphs 1-2, Page 23) or the like (Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-9, Page 9).

It would have been obvious to one skilled in the art at the time of the invention that the method for surveying users as taught by Dyer et al., would have benefited from surveying online users regarding one or more consumer products using computers over a computer network in view of the teachings of Burke et al.; the resultant system providing the expected and well known benefits associated with automation and/or use of the Internet such as decreased costs, increased reach, increased speed and the like (Burke et al.: Paragraph 1, Page 1; Last Paragraph, Page 7; Bullet 3, Page 8, Paragraphs 1-9, Page 9).

Regarding Claim 15 Dyer et al. does not teach surveying users online or subsequently transmitting the user's first response to the questionnaire in XML.

Burke et al. teach surveying and consumer product testing/evaluation online utilizing a plurality of well-known Internet technologies including but not limited to XML in analogous art of marketing research and/or consumer product testing for the purposes of providing "uniformity to electronic documents" (Paragraph 3, Page 3).

It would have been obvious to one in the art at the time of the invention that the method for surveying users as taught by Dyer et al. would have benefited from surveying users online using a plurality of well known Internet technologies such as XML in view of the teachings of Burke et al.; the resultant system having a standard and flexible means for transmitting and representing a plurality of survey data (Burke et al.: Paragraph 3, Page 3).

Further it is noted that the format used to transmit the response to the survey/questionnaire represents non-functional descriptive material and is not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless specific format utilized to transmit the response to the survey/questionnaire. Further, the structural elements remain the same regardless of the specific format utilized to transmit the response to the survey/questionnaire. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re*

Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Regarding Claim 16 Dyer et al. teach a system and method for surveying users wherein the user responses (first and subsequent) are associated with an identifying code (Column 2, Lines 54-57; Column 4, Lines 51-59; Column 5, Lines 50-51).

Regarding Claim 17 Dyer et al. does not expressly teach that the identifying code is a cookie as claimed.

Burke et al. teach uniquely identifying users using cookies (Paragraphs 2-3, Page 18; Bullets 1-2, Page 19) in analogous art of marketing research and/or consumer product testing/evaluation for the purposes of uniquely identifying users and their responses (i.e. individual-level data; Last Paragraph, Page 19).

It would have been obvious to one in the art at the time of the invention to that the method for surveying users, including its ability to uniquely identify survey respondents/users, would have benefited from uniquely identifying online users using cookies in view of the teachings of Burke et al.; the resultant system enabling businesses to analyze and track individual-level data (Burke et al.: Last Paragraph, Page 19).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Frost, Alan, U.S. Patent No. 5,041,972, teaches a method and system for presenting and testing/evaluating one or more consumer products using questionnaires/interviews/surveys.

- Sack, Michael, U.S. Patent No. 5,124,911, teaches a method for conducting consumer product (concept) testing (surveying, evaluation) of one or more consumer products such as existing vs. new/concept products.

- Burke, Raymond, U.S. Patent No. 5,848,399, teaches a computer-implemented system and method for purchasing consumer products (packaged goods) over a computer network.

- Peters et al., U.S. Patent No. 5,893,098, teach a system and method for creating, conducting and managing surveys of online users over a computer network.

- Fuerst, Carol, U.S. Patent No. 6,189,029, teaches an Internet-based survey system and method for surveying online users wherein users, surveys, survey responses and survey questions are each uniquely coded/identified.

- Schulze, Everett, U.S. Patent No. 6,233,564, teach a method and system for conducting online (over a computer network) and offline surveys/questionnaires wherein the survey/questionnaire responses are received over a plurality of different time periods.

- Davis, Hugh, U.S. Patent No. 6,256,663, teaches a system and method for surveying online users via focus groups conducted over a computer network (Internet).

- Foley et al., U.S. Patent No. 6,623,040, teach a method and system for performing consumer preference testing of one or more consumer products such as snack foods using well known hedonic testing.

- Hays, Joseph, U.S. Patent No. 6,865,578, teaches a system and method for performing market research over a network (Internet), computer-assisted telephone interviewing (CATI), mail and/or mall intercept wherein the system performs waves of surveys/evaluations and corrects for incorrect data (e.g. editing out multiple responses to questions requiring a single response).

- Ulenas et al., U.S. Patent Publication No. 2002/0026390, teach a system and method for collecting online user consumer product preferences via product selection and evaluation information.

- Nishikawa et al., U.S. Patent Publication No. 2002/0077882, teach a system and method for integrating the “voice of the consumer” into the consumer product design/development process wherein the system/method “measures the degree to which each product concept among a many-membered set of product concepts satisfies the wants and needs of the user.”

- Kortekaas et al., U.S. Patent Publication No. 2003/0139964, teach a method for surveying online users via the Internet wherein users evaluate/test one or more consumer products.

- Graf, Ernest et al., Food Product Development (1991) teach a method/approach to developing consumer food products utilizing a plurality of marketing research techniques/approaches including but not limited to consumer product testing/research (e.g. preference, acceptance, sensory testing, paired comparison, scaling, rating, FACT, and the like) wherein such efforts provide information that enable businesses to reduce the risk/improve the odds of success associated with product development as well as understand consumer issues, needs and benefits. Graf et al. further teach the use of well known blind/branded, in-home usage and focus group surveys/evaluations to optimize product concepts, prototypes and the like.

- Fuller, Gordon, New Food Product Development (1994) teaches an method for developing food products from concept to market comprising a plurality of steps/stages including but not limited to the generation and screening of new products (ideas, concepts, prototypes), consumer product/concept/prototype testing (interviewing, surveying; e.g. paired comparisons), market research, consumer trials of sample products, consumer preference testing and determining (estimating, predicting, etc.) a product's lifecycle (sustainability, acceptance, success). Fuller further teaches that the testing (screening, evaluation) of consumer products, in the food industry, must be an ongoing/continually process in order to keep up with an ever changing marketplace (i.e. consumer preferences, tastes, etc. change over time).

Fuller teaches the use of the old and well-known Delphi method for forecasting consumer preferences and/or product success wherein the method comprises multiple

rounds of questionnaires sent to selected consumers such that each round's questions are dependent on the consumer responses received in previous rounds.

Fuller further teaches the utilization of consumer product preference testing using well known central location, focus group or in-home tests wherein consumers are provided coded samples of one or more consumer products such as tortilla chips and asked to complete one or more surveys/questionnaires about the product over a period of time.

- Moskowitz, Howard, Consumer Testing and Evaluation of Personal Care Products (1995) teaches the well known utilization of consumer product testing/surveying/research (e.g. paired comparisons, benchmarking, scaling, rating, etc.) to reduce the risk of new (concept, prototype) products. Moskowitz further teaches that there are several key issues in conducting a product evaluation/test including but not limited to determining the number of panelists, the number of products, the frequency/length of the test/survey and maintaining the consumers interest in the test/survey over a period of time.

- Resurreccion, Anna, Consumer Sensory Testing for Product Development (1998) teaches a method for consumer product testing (surveying, researching) utilizing a plurality of well known techniques/approaches including but not limited to: acceptance, preference, paired, rating, consumer panel, central location, mobile laboratory and home-use tests/surveys/questionnaires.

More specifically Resurreccion teaches the well-known use of home-use tests (HUT, home placement, in-home, etc.) wherein such tests are used to "assess product

attributes, acceptance/preference and performance under actual-user conditions” Resurreccsion teaches that HUT includes sending to user's homes one ore more consumer products and self-administered questionnaires/surveys comprising inclusion of attribute diagnostic, addition of product performance and paired-preference questions.

- Brody, Aaron et al., New Food Products for a Changing Marketplace (1999) teach well known methods/approaches to food product development including but not limited to: product concept testing, product optimization, benchmarking and the like. Brody et al. further teach the importance of “sustained consumer testing and in-market testing” wherein “The product development process is essentially a series of screens and evaluations” including market assessments, detailed market studies, concept tests/surveys/questionnaires (e.g. ACNielsen's BASES), volumetric estimates and the like.

More specifically Brody et al. teach the well known use of home-use testing/surveying wherein “Home tests are often used for products that the consumer has to prepare, where consumption is relevant rather than taste alone, and where there is the possibility that with repeated consumption the consumer may become bored with the product.”

- Jacobson, Gary, How Frito-Lay Stays in the Chips (1989) teaches the consumer product surveying/testing of snack food products by Frito-Lay wherein consumers are provided one or more consumer products/snack foods and asked questions about the one or more consumer products that are entered and stored in a

computer for further analysis. Jacobson further teaches that the computer-implemented consumer surveys results are used to "continually tinker with new tastes and promotional methods based on the responses received from the test consumers" and that "A product is not released for general distribution until all feedback says it is right."

Jacobson further teaches that Frito-Lay also "tests products with consumer in shopping malls and in homes with target customers around the country." And that "If the results from the tests are positive and the product's sales potential is high enough, the last step is a market test" "occasionally, however, products go right from the home test to full-scale distribution because the results are so encouraging."

- Theodore, Sarah, Gatorade's R&D philosophy (1998) teaches the use of computer-based consumer product tests/surveys to determine (estimate, forecast, predict, etc.) the sustainability (performance, likeability, potential, etc.) of consumer products wherein "Test results are compiled using an automated data entry system. Participants sit in front of a computer screen and receive samples via a lazy-susan set-up that separates them from employees on the other side. Using a touch screen pen, participants answer questions that are then analyzed by the system."

- Hardie et al., An empirical comparison of new product trial forecasting models (1999) teaches the utilization and availability of a plurality of product trial forecasting models (i.e. the ability of a product to sustain consumer interest/purchases, market share, etc.).

- Ozer, Muammer, A Survey of New Product Evaluation Models (1999) teaches the importance of evaluating the viability (sustainability, feasibility, etc.) of a new product

at "every stage of its development process". Ozer further teaches the application of a plurality of "new" technologies (methods, systems, etc.) including Internet surveys/questionnaires to well known product concept testing methods wherein "concept testing is concerned with assessing consumer's reactions to a new product concept, identifying important attributes and determining potential market size."

- Dahan, Ely et al., *The Predictive Power of Internet-Based Product Concept Testing Using Visual Depictions and Animation* (2000) teaches a computer-implemented system and method for surveying online users over a computer network (Internet) wherein online users are presented one or more consumer products and asked one or more surveys/tests/questions about the consumer products and further wherein the consumer responses are utilized for such things as predicting market share (i.e. ability to sustain/capture consumer interest/purchases).

Dahan et al. further teach that the market research over the Internet provides a plurality of benefits for market research such as reduce costs, increase reach, increase speed to market and the like and that the surveys utilize CGI to capture and transmit consumer survey/questionnaire responses.

- Hollingsworth, Pierce, *Test Marketing in the Internet Age* (2000) teaches the widespread utilization of consumer product testing utilizing the Internet by the food processing industry.

- Miller, Thomas et al., *Online Market Research* (2001) teach a plurality of systems and methods for surveying online users wherein such systems provide a plurality of benefits (speed, cost, reach, etc.) and utilize a plurality of well known Internet

technologies (cookies, CGI, Java, etc.). Miller et al. further teach that such systems/methods represent an evolution from computer-assisted telephone interviewing systems dating back to the early 1970's wherein such system provide consistency checks and dynamic/automatic question branching which simplify the development of tailored surveys/tests.

- Arnold, Catherine, Hershey research sees net gain (2002) teaches the utilization of online consumer product research/testing/surveying of snack food by Hershey in 1999-2000 wherein "Hershey uses new-product testing to examine a myriad of concept elements such as flavors, names and benefit positioning." Arnold further teaches that in 1999 Hershey and NFO conducted and compared online and offline consumer product tests/surveys/research.

- NFOi.com Web Pages (2000) teaches the commercial availability of a plurality of online systems and methods for surveying/testing/researching online and offline users with respect to a plurality of topics including but not limited to online and offline product concept testing and new product testing which provide "a cost effecting method to predict accurately which concepts will be winners and which will be loser's" and enabling businesses to "rapidly (one week, from start-to-finish) screen a wide variety of marketing and product concepts to determine which ones have the greatest appeal to online and offline consumers."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott L. Jarrett whose telephone number is (571) 272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hafiz Tariq can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SJ
12/15/2005



TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600